

§761.10

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original operation was made. In evaluating whether a person meets this standard, the agency making the determination may consider factors such as:

(i) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of §761.11 or 30 U.S.C. 1272(e) depend upon use of that land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of §761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation before the land came under the protection of §761.11 or 30 U.S.C. 1272(e) rely upon use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map submitted under §779.24(c) or §783.24(c) of this chapter before the land came under the protection of §761.11.

(c) *Roads.* A person who claims valid existing rights to use or construct a road across the surface of lands protected by §761.11 or 30 U.S.C. 1272(e) must demonstrate that one or more of the following circumstances exist if the road is included within the definition of “surface coal mining operations” in §700.5 of this chapter:

(1) The road existed when the land upon which it is located came under the protection of §761.11 or 30 U.S.C. 1272(e), and the person has a legal right to use the road for surface coal mining operations.

(2) A properly recorded right of way or easement for a road in that location existed when the land came under the protection of §761.11 or 30 U.S.C. 1272(e), and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations.

(3) A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of §761.11 or 30 U.S.C. 1272(e).

(4) Valid existing rights exist under paragraphs (a) and (b) of this definition.

We, us, and our refer to the Office of Surface Mining Reclamation and Enforcement.

You and your refer to a person who claims or seeks to obtain an exception or waiver authorized by §761.11 or 30 U.S.C. 1272(e).

[48 FR 41348, Sept. 14, 1983, as amended at 52 FR 4261, Feb. 10, 1987; 56 FR 65634, Dec. 17, 1991; 64 FR 70831, Dec. 17, 1999]

§761.10 Information collection.

(a) In accordance with 44 U.S.C. 3501 *et seq.*, the Office of Management and Budget (OMB) has approved the information collection requirements of this part. The OMB clearance number is 1029-0111. The regulatory authority or other responsible agency will use this information to determine whether a person has valid existing rights or qualifies for one of the other waivers or exemptions from the general prohibition on conducting surface coal mining operations in the areas listed in 30 U.S.C. 1272(e). Persons seeking to conduct surface coal mining operations on these lands must respond to obtain a benefit in accordance with 30 U.S.C. 1272(e).

(b) We estimate that the public reporting and recordkeeping burden for this part will average 15 hours per response under §761.13, 0.5 hour per response under §761.14, 2 hours per response under §761.15, 14 hours per response under §761.16, 2 hours per response under §761.17(c), and 2 hours per response under §761.17(d), including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden for §761.16 includes 6 hours for the person seeking the determination and 8 hours for the agency processing the request. Send comments regarding this burden estimate or any other aspect of these information collection and recordkeeping requirements, including suggestions for reducing the burden, to the Office of Surface Mining Reclamation and Enforcement, Information Collection Clearance Officer, 1951 Constitution Avenue, N.W., Washington, DC

Surface Mining Reclamation and Enforcement, Interior

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20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, N.W., Washington, DC 20503. Please refer to OMB Control Number 1029-0111 in any correspondence.

[64 FR 70832, Dec. 17, 1999]

§ 761.11 Areas where surface coal mining operations are prohibited or limited.

You may not conduct surface coal mining operations on the following lands unless you either have valid existing rights, as determined under § 761.16, or qualify for the exception for existing operations under § 761.12:

(a) Any lands within the boundaries of:

- (1) The National Park System;
- (2) The National Wildlife Refuge System;
- (3) The National System of Trails;
- (4) The National Wilderness Preservation System;
- (5) The Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, 16 U.S.C. 1276(a), or study rivers or study river corridors established in any guidelines issued under that Act; or
- (6) National Recreation Areas designated by Act of Congress.

(b) Any Federal lands within a national forest. This prohibition does not apply if the Secretary finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations, and:

(1) Any surface operations and impacts will be incident to an underground coal mine; or

(2) With respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the Secretary of Agriculture has determined that surface mining is in compliance with the Act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 *et seq.*; and the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* This provision does not apply to the Custer National Forest.

(c) Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places. This prohibition does not apply if, as provided in § 761.17(d), the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place jointly approve the operation.

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road. This prohibition does not apply:

(1) Where a mine access or haul road joins a public road, or

(2) When, as provided in § 761.14, the regulatory authority (or the appropriate public road authority designated by the regulatory authority) allows the public road to be relocated or closed, or the area within the protected zone to be affected by the surface coal mining operation, after:

(i) Providing public notice and opportunity for a public hearing; and

(ii) Finding in writing that the interests of the affected public and landowners will be protected.

(e) Within 300 feet, measured horizontally, of any occupied dwelling. This prohibition does not apply when:

(1) The owner of the dwelling has provided a written waiver consenting to surface coal mining operations within the protected zone, as provided in § 761.15; or

(2) The part of the operation to be located closer than 300 feet to the dwelling is an access or haul road that connects with an existing public road on the side of the public road opposite the dwelling.

(f) Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park.

(g) Within 100 feet, measured horizontally, of a cemetery. This prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations.

[64 FR 70832, Dec. 17, 1999]

§ 761.12 Exception for existing operations.

The prohibitions and limitations of § 761.11 do not apply to:

(a) Surface coal mining operations for which a valid permit, issued under